

# Supreme Court of Florida

CASE NO.: SC96629

INQUIRY CONCERNING A  
JUDGE, NO. 99--9

vs. RE: PATRICIA A. KINSEY

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Petitioner

Respondent

## Respondent's Response to Order to Show Cause

In order to understand and evaluate the events and conduct of Judge Kinsey's judicial campaign, it is helpful to review some of the background evidence presented to the hearing panel. After a business career that began as a receptionist and saw her rise to a vice presidency of a major national financial services company, Pat Kinsey decided to fulfill her life long dream of becoming a prosecutor. Since she had only two years of college, she enrolled at the University of West Florida and completed her undergraduate degree. She was then accepted to law school at Florida State University.

During her final semester of law school she was given permission to intern with the State Attorney's office in Pensacola where she worked in the misdemeanor division. After graduation, she was hired as a full time assistant state attorney and assigned to Judge William Green's division of the Escambia County court.

In Judge Green's division she handled the typical cases that appear before county judges. Having brought the same work ethic that made her a success in the business world to her job as an assistant state attorney, she strived to improve how she presented her cases. After a particularly frustrating day of judge trials during which every defendant was found "not guilty," she felt she must be doing something wrong and asked Judge Green for a critique so she could improve her performance. Judge Green assured her she was not doing anything

wrong and explained that when the only evidence in a case was the testimony of a law enforcement officer and the testimony of a defendant, he ruled for the defendant every time.

Very disturbed by Judge Green's attitude toward law enforcement, she observed he often treated law enforcement officers and victims with disrespect and, in her opinion, failed to hold criminals accountable for their violations of the law. She quickly learned both the law enforcement community and the state attorney's office regarded Judge Green's attitude as a problem which was not confined to her cases.

Judge Green faced reelection in 1994. Although she and others in the law enforcement community hoped someone would oppose him, no one did and he was reelected without opposition.<sup>1</sup> Although she did not remain in Judge Green's division for the remainder of her career as an assistant state attorney, she continued to receive complaints about how he treated victims and law enforcement officers, as well as his failure to hold criminals accountable.

As her career as an assistant state attorney developed, Pat Kinsey earned an outstanding reputation with law enforcement. Not only did she work hard on their cases, she believed that as a prosecutor she had an ethical obligation to ensure people were properly charged. On many occasions she asked law enforcement officers to investigate information potentially beneficial to defendants. While this occasionally resulted in charges being dismissed, she understood a prosecutor's primary obligation to see justice done is more important than winning cases.

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<sup>1</sup> At that time Judge Kinsey did not meet the Constitutional requirement of having been a member of the Florida Bar for five years and could not qualify to run for county judge.

As more people became aware of her ability, she was encouraged to run against Judge Green when he faced reelection in 1998. Believing change was needed in that division of county court, she decided to run. Rather than ambushing Judge Green, she made her plans to seek the office public long before qualifying opened in July 1998.

Judge Green had been in office twelve years, giving him the advantage of incumbency and an appearance of experience. So voters would have information needed to make an intelligent choice, she felt it important to educate them about her background and make them aware of her support from people in the community who saw judges and prosecutors at work on a daily basis.

During the campaign she received tremendous support from law enforcement and was formally endorsed by both the Police Benevolent Association and the Fraternal Order of Police. This support was important for several reasons. Because of her work as an assistant state attorney, this was the group that knew her best. She had worked closely with them on a daily basis for many years, and they depended on her. In addition, the citizens of Escambia County have great respect for law enforcement, and she knew many voters would seek the advice of law enforcement officers before deciding how they would vote.

The election was highly contested. At the first candidates' forum Judge Green opened his presentation by telling the audience "it's just not right to run against a sitting judge," implying Judge Kinsey was being unethical by seeking the office. In spite of this, her campaign focused on job performance and accountability. The campaign used brochures to introduce her to voters. One theme was that she would be a "tough, fair, compassionate" judge. At the

same time the brochures described her past work with law enforcement as an assistant state attorney and law enforcement's trust in her.

Other brochures raised issues of Judge Green's shortcomings, such as his failure to take law enforcement officers' testimony seriously and his failure to hold criminals accountable by incarcerating them. One brochure described how he handled specific cases in which he failed to give the community the protection Judge Kinsey felt it deserved.<sup>2</sup> Another brochure focused on how he treated an elderly couple who appeared before him seeking protection from their abusive son.

While Judge Kinsey's campaign had the central theme of holding criminals accountable while being a tough, but fair and compassionate judge, it also left no doubt she believed Judge Green was not doing his job properly. While judges are obligated to follow the law and apply it fairly and impartially, there are many areas where they exercise discretion, and two judges may reach legally correct, but vastly different results. She and Judge Green had different philosophies of how a judge should exercise this discretion, and she felt it crucial voters be aware of the distinct differences between the two candidates.

Judge Kinsey won the election overwhelmingly and took office in January 1999. She was soon notified the Judicial Qualifications Commission was investigating her campaign conduct. In September 1999 the JQC filed an eleven charge Notice of Formal Charges

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<sup>2</sup> One brochure mentioned two cases, Gerard Alsdorf and Stephen Johnson, in which Judge Green granted bond to two individuals that two circuit judges had ordered arrested on "no bond" warrants. These bonds were later revoked by two other circuit judges, resulting in a situation where four different circuit judges disagreed with how Judge Green handled these cases.

alleging violation of various provisions of Canons 1, 2, 3 and 7. All of the alleged violations pertained to the campaign. Most were based on campaign literature, particularly her support from law enforcement and what the commission contended was a bias toward law enforcement. In February 2000 the commission filed an Amended Notice of Formal Charges which added a new charge based on a campaign radio spot. A formal hearing was held June 12 and 13, 2000. The hearing panel issued its findings, conclusions and recommendations on October 18, 2000.

Recognizing job performance and accountability would be major issues in her campaign, she studied this court's decision in In re Inquiry Concerning Judge Alley, 699 So.2d 1369 (Fla. 1997) carefully, and it became her "Bible" for the campaign. (T. 75). She also relied heavily on the "Guide to Canon Seven" distributed by Judge Charles Kahn. When analyzing her campaign, it is important to recognize what is not alleged. Contrary to Alley, there are no allegations she engaged in partisan politics or that she misrepresented the incumbent's qualifications or portrayed him in an unfavorable manner by claiming he represented vicious criminals. There is no allegation she misrepresented her qualifications, or that she claimed to have judicial experience. There is also no allegation she manipulated a reprinted newspaper article to make it falsely appear she received the newspaper's endorsement. She worked diligently to avoid any of the conduct criticized in Alley.

The Hearing Panel Should Have Granted the Motion to Dismiss  
All Charges Based on Canons Other than Canon 7

All charges in the Notice of Formal Charges alleged violations of Canons 1 and 2(A) as well as various provisions of Canon 7. In addition, charges 1, 2, 3 and 10 also alleged

violations of Canon 3(b)(5) while charges 6, 9 and 10 also alleged violations of Canon 3(b)(9). Judge Kinsey moved to dismiss all references in the Notice of Formal Charges to alleged violations of Canon 1, Canon 2(A), Canon 3(B)(5), Canon 3(B)(9) on the ground these canons are not applicable to a “candidate” for judicial office who is not an Article V judge at the time of his or her candidacy.

The definitions section of the Code defines both “candidate” and “judge.” A “candidate” is defined as “a person seeking selection for or retention in judicial office by election or appointment.” A “judge” is defined as meaning “Article V, Florida Constitution judges and, where applicable, those persons performing judicial functions under the direction or supervision of an Article V judge.” When these definitions are analyzed it is apparent that while an incumbent judge seeking reelection is a “candidate,” a candidate who does not hold an Article V judicial office cannot be a “judge” as defined by the Code.

The next to last section of the Code is entitled “Application of the Code of Judicial Conduct.” It states the Code applies to justices of the Supreme Court and judges of the District Courts of Appeal, Circuit Courts, and County Courts as well as others who perform judicial functions such as magistrates, special masters and similar positions. This section does not mention “candidate” and does not contain any language stating or implying the Code, other than Canon 7, applies to any candidate who does not hold an Article V judicial office.

Canon 7 of the Code of Judicial Conduct regulates conduct of both judges and non-judge candidates for judicial office. Other provisions of the Code regulate the conduct of judges while they hold judicial office. Canon 7 is the only portion of the code other than the

“Preamble” and “Definitions” section that makes specific reference to candidates for judicial office and was obviously drafted to regulate campaign conduct.

Canon 1 is entitled “A Judge Shall Uphold the Integrity and Independence of the Judiciary” and states a judge shall participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved. Neither Canon 1 nor its commentary mentions “candidate” or makes any reference to the election process.

The inapplicability of Canon 1 to “candidates” who are not Article V judges is demonstrated by language in Canon 7A(3)(a) which mirrors the language of Canon 1 by requiring “a candidate for judicial office shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary.” In addition, Canon 7E (“Applicability”) states Canon 7 “generally applies” to all incumbent judges and judicial candidates, and a successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct.<sup>3</sup> Canon 7E further specifies that a lawyer who is a candidate for judicial office is subject to Rule 4-8.2(b) of the Rules Regulating the Florida Bar, which states lawyers who are candidates for judicial office shall comply with the “applicable provisions of the Code of Judicial Conduct.”

If Canon 1 applied to candidates who are not Article V judges, there would be no need for the language of Canon 7A(3)(a), which requires the same conduct. The use of the term

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<sup>3</sup> If the entire code applied to non-Article V candidates, there would be no need for Canon 7E as the appropriate language would have been included in the “Application of the Code of Judicial Conduct” section.

“applicable provisions” in Rule 4-8.2(b) also illustrates that the entire code does not apply to non-Article V candidates. Had this court wanted to make the entire code applicable to non-Article V candidates, it could have simply stated in Rule 4-8.2(b) “a lawyer who is a candidate for judicial office shall comply with “all provisions” of the Code of Judicial Conduct and used similar language in Canon 7.

Canon 2 is entitled “A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge’s Activities.” Subsection 2(A) states “a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Neither Canon 2(A) nor its commentary mentions “candidate” or makes any reference to the election process. Canon 2(A) is inapplicable to non-Article V candidates for the same reasons Canon 1 is inapplicable.

Canon 3 is entitled “A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.” Section B is entitled “adjudicative responsibilities.” Subsection B(5) states:

A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge’s direction and control to do so. This section does not preclude the consideration of race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors when they are issues in the proceeding.

The accompanying commentary states a judge must not make comments, gestures or engage in other conduct that might be perceived as sexual harassment. It then states a judge must perform “judicial duties” impartially and fairly and discusses how facial expressions, body language and oral communication can give parties, lawyers, jurors and others the appearance



of judicial bias. It is clear from the language of subsection B(5) and its commentary that it applies to actions of a judge taken while actually performing judicial duties. Neither the canon nor the commentary contain any reference to “candidate” or the election process. Canons 3(B)(5) and 3(B)(9) are inapplicable to non-Article V candidates for the same reasons Canon 1 is inapplicable.

The Publication of Information About the Pending Cases  
Against Stephen Johnson and Gerard Alsdorf Did Not Violate the Applicable Canons

Even if it is assumed that Canon 3(B)(9) is applicable to a “candidate” who does not hold an Article V office, all information publicized about Johnson and Alsdorf was public record and available to anyone interested in the cases. This information was published to allow voters to evaluate how the incumbent handled first appearances in serious cases. These two cases provided a valuable standard of comparison as four other judges who independently evaluated the same information came to dramatically different conclusions on how the cases should be handled.

In Alsdorf, circuit judge Nancy Gilliam was the duty judge when the warrant application was submitted by Pensacola police officer Mike Simmons. As officer Simmons testified, Judge Gilliam reviewed the warrant application and issued a “no bond” warrant for Alsdorf’s arrest. (T. 439 - 440). After Judge Green set bond at first appearance, the state immediately filed a motion for pretrial detention. By that time the case had been assigned to circuit judge Laura Melvin who, after a hearing, revoked the bond and ordered Alsdorf held without bond pending trial.

In the Johnson case, circuit judge Edward Nickinson signed the original “no bond” warrant for his arrest. At first appearance following Johnson’s arrest, Judge Green reduced his bond to \$10,000.00, which would allow him to be released by payment of a \$1,000.00 bond premium. After first appearance the case was assigned to circuit judge Joseph Tarbuck who granted the State’s motion for pretrial detention and ordered Johnson held without bond pending trial.

These two cases were excellent examples of what Judge Kinsey felt was Judge Green’s failure to protect the community from individuals charged with committing dangerous crimes. While his rulings may have been legally correct and he certainly had the right to exercise discretion, voters also have the right to examine and evaluate how that discretion is exercised. Rather than criticizing Judge Green by expressing an opinion he was wrong to set bond in these two cases, Judge Kinsey presented information about the cases. In effect she used the four circuit judges as expert witnesses to demonstrate the shortcomings of his rulings. When four other judges disagree with the incumbent on the same facts, it is reasonable to conclude there is a problem and voters are entitled to know about it.

Subsection B(9) of Canon 3 prohibits a judge, while a proceeding is pending or impending in any court, from making public comment that might reasonably be expected to affect its outcome or impair its fairness. It does not prohibit all comment, only that which would reasonably be expected to affect the outcome or impair fairness. The hearing panel found Judge Kinsey guilty of the alleged violation because the published details “could affect the outcome or impair the fairness and integrity of the proceeding.”

Although the Commission used a “shotgun” approach to charging violations, Canon 3(b)(9) is the Canon most applicable to the alleged violation. Even if we assume Canon 3 is applicable to a “candidate” who is not an Article V judge, the Commission’s findings are not legally sufficient to sustain a violation. In its report, the hearing panel finds Judge Kinsey “publicized the details of the pending cases of two criminal defendants, Stephen Johnson and Gerard Alsdorf, to the public in a manner “that could affect the outcome or impair the fairness and integrity of these proceedings.” This finding is legally insufficient to support a violation as Canon 3(b)(9) prohibits a judge from making any public comment that “might be “reasonably expected to affect its outcome or impair its fairness.” Before a public comment violates this Canon, there must be more than a possibility of affecting the outcome of a proceeding, there must be a reasonable expectation that it will. The evidence presented did not rise to the level required to limit her first amendment right to make voters aware of Judge Green’s actions in these two cases. Gentile v. State Bar of Nevada, 111 S.Ct. 2720 (1991).

The Statements Made in Campaign Brochures and Radio Interview were Protected Speech Under the First Amendment to the Constitution of the United States

Count 1 charged violations of Canons 1, 2(A), 3(b)(5), 7(A)(3)(a) and 7(A)(3)(d)(i) - (ii) by distributing a campaign brochure 1) entitled “*Pat Kinsey: The Unanimous Choice of Law Enforcement For County Judge*” (JQC-1) which contained the statement “police officers expect judges to take their testimony seriously and to help law enforcement by putting criminals where they belong . . . behind bars!” as opposed to simply pledging or promising the faithful and impartial performance of her duties in office.

While Canons 7A(3)(d)(i)-(ii) prohibit a candidate from making pledges or promises of conduct in office other than the faithful and impartial performance of the duties of office and from making statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court, they were not intended to prohibit the dissemination of campaign brochures such as those used by the respondent.

As Judge Kinsey testified, during the campaign she was frequently asked how she would rule on abortion, school prayer, gun control, the death penalty and if she would protect the community by giving drunk drivers jail time. (T. 141). Recognizing that answering these questions would be a commitment on a case, issue or controversy likely to come before her court, she always told voters a candidate in a judicial race is prohibited from commenting on how they will rule in specific cases. She did not believe Canon 7 precluded educating voters about her philosophy and that she intended to be tough on crime and hold criminals accountable.

The Commission suggested that language in campaign brochures critical of the incumbent meant that if Judge Kinsey were faced with the same circumstances, she would do things differently. Therefore, because she would do things differently, she was violating Canons 7A(3)(d)(i) and (ii) by making pledges of conduct in office other than the faithful and impartial performance of the duties of office and committing or appearing to commit with respect to cases, controversies or issues likely to come before her. This reasoning was implicitly adopted by the hearing panel in finding her guilty of charges 1 through 5.

The information in the campaign brochures was used to give voters information about Judge Green's performance in office and the use of judicial discretion and is constitutionally protected speech under the first amendment.

The Evidence was Legally Insufficient to Find a Knowing  
Misrepresentation Concerning Grover Heller's Bond Revocation

Charge 7 is based on a campaign brochure titled "*A Shocking Story of Judicial Abuse*" (JQC-6). The focus of the brochure was how Judge Green mistreated an elderly couple who appeared in his court seeking protection from their abusive son. Before (or "instead" of) revoking the son's bond, the incumbent chose to "test" the elderly couple by offering to incarcerate them in the Escambia County jail. Although the son's bond was eventually revoked before the hearing ended, it was not revoked until after the "testing" and was revoked because the son failed to contact his public defender, not to protect the parents.

While it may be a sad commentary on the current state of our society, Grover Heller's case was an ordinary domestic violence case of the type seen by Florida's county judges on a daily basis. If Judge Green had not "tested" his elderly parents by offering to incarcerate them in the Escambia County jail, this case would never have been an issue in the campaign regardless of what action he took on the bond.

Because this conduct was so outrageous, the brochure reprinted newspaper coverage to tell the story. The campaign felt that unless told in the words of a disinterested third party, voters would not believe a judge had behaved so inappropriately. The Pensacola News Journal covered the story extensively, so it was logical to reprint their articles and editorial.

The Commission's finding of an intentional misrepresentation concerning Heller's bond is unsupported by the evidence. Reading the entire brochure makes it obvious that while the headline of the inside section of the brochure reads "Judge William Green offered to jail the elderly couple instead!" use of the word "instead" was a reference to his initial offer to jail the parents rather than (or instead of) revoking Heller's bond. The reprinted newspaper articles and editorial point out in at least three places that Heller's bond was eventually revoked. Additionally, the headline of one reprinted article stated "Mother relieved that son is jailed again after threat." When the brochure is read in context, it is clear (though irrelevant to the theme of the brochure) the bond was revoked.

Although not spelled out in the hearing panel's findings and conclusions, an undertone of the Commission's argument is voters will base their decision entirely on one possible interpretation of a single word in a headline and either can't be relied on to read the entire brochure or don't have sufficient intelligence to read the brochure in context.

How the incumbent treated this elderly couple is precisely the type of information voters need to evaluate which candidate should receive their votes. If trial judges were subject to merit retention, no one would argue that treating litigants in this manner isn't relevant to deciding whether a judge should retain his office. Only by taking the word "instead" out of context and ignoring three references to the revoked bond in the remainder of the brochure could the hearing panel conclude there was a knowing misrepresentation of whether Heller's bond had been revoked.

The Evidence was Legally Insufficient to Find a Knowing Misrepresentation  
Concerning the Charges Against Stephen Johnson

Charge 9 is based on statements in a campaign brochure titled "*A Vital Message From Law Enforcement*" (JQC-4) that dealt with a criminal defendant named Stephen Durant Johnson. Although subject to a restraining order prohibiting contact with his estranged wife, Johnson went to her home in the early hours of the morning. After cutting the telephone line, he applied duct tape to a kitchen window to prevent the glass from making noise when he shattered it. He also hung a strip of duct tape outside the front door, apparently to be used to restrain her. When he was discovered outside the house, he broke down the front door, began choking his wife and tried to drag her from her home. Fortunately, neighbors realized she was being attacked and called the sheriff's office. Realizing law enforcement was on the way, Johnson fled the scene.

Following the attack, deputy Tom O'Neal, a veteran of the Escambia County Sheriff's Office, applied for a warrant for Johnson's arrest. The warrant application was presented to circuit judge Ed Nickinson. After evaluating the circumstances, Judge Nickinson issued a "no bond" warrant for Johnson's arrest. Johnson was arrested and given a first appearance before Judge Green who, having the same information as Judge Nickinson, set bond at \$10,000.00.

The case was assigned to Judge (then assistant state attorney) Kinsey. After reviewing the facts and interviewing the victim, she charged Johnson with attempted first degree murder, false imprisonment, burglary of a dwelling and violation of a restraining order. Because of the nature of the crime and Johnson's prior conviction for killing a woman in Mississippi, she also moved to revoke Johnson's bond.

Circuit Judge Joseph Tarbuck considered the same basic information that had been available to both Judge Nickinson when he issued the original no bond warrant and to Judge

Green when he granted bond at first appearance. Finding Johnson was a danger to the community, Judge Tarbuck agreed with Judge Nickinson that Johnson should be held without bond and issued an order revoking the bond and ordering him held without bond pending trial.

The hearing panel concluded Judge Kinsey knowingly misrepresented the nature and seriousness of the criminal charges pending in the Johnson case “because the brochure left the clear impression that Johnson had been charged with attempted murder and burglary and no such charges were in fact pending at the time that he appeared at his bond hearing.”

While it is correct that Johnson had not been formally charged with attempted murder at the time of his first appearance, it is also clear from the language of the brochure that there was no intent to misrepresent the nature and seriousness of the charges against Johnson. The brochure simply listed the formal charges against Johnson. The “facts of the case” section of the brochure accurately described what occurred. It is important to note that there is no allegation any of these facts were misrepresented or were not available to Judge Green.

As Judge Kinsey testified, she had worked with the case for a long time and this was the way she thought of the charges. Even if the “charged with” language of the brochure is interpreted as implying these were the charges at the time of Johnson’s first appearance, it is obvious there was no reason for misrepresentation. If rather than a mistake about how the language might be interpreted, there had been an intent to misrepresent the charges against Johnson, it would have been easy to do it in a manner that was technically correct while creating an even more damaging picture of Judge Green’s actions.

The purpose of the brochure was to give voters information they could use to evaluate how Judge Green handled serious offenders that appeared before him. As also occurred in



the Alsdorf case, two circuit judges independently evaluated the same basic information that was available to Judge Green, and both felt Johnson presented such a danger to the community that he should be held without bond. One of the duties of the first appearance judge is to evaluate information contained in the arrest reports and assess what should be correct charges. When he later testified at a hearing in the Johnson case, Judge Green acknowledged he had the information available at first appearance and that this appeared to be an egregious case. The timing of the formal charges had no bearing on an analysis of Judge Green's performance in this case. It is interesting that the hearing panel found it necessary to state "certainly Assistant State Attorney Kinsey was on notice of the correct charges" implying a lack of intent to misrepresent. (R-28).

Regardless of the hearing panel's conclusions, Judge Kinsey is secure in her knowledge she did not intentionally misrepresent any information in either the Johnson or Heller cases. While mistakes were made during the campaign and she would do some things differently if she had the opportunity, Judge Green's performance on the bench was such that misrepresentation was totally unnecessary.

#### The \$50,000.00 Fine is Inappropriate and Excessive

As pointed out in the "contrary view" one member of the hearing panel was permitted to express, the \$50,000.00 fine recommended by the panel "bears no relation to reality" and is a "figure plucked out of thin air" in order to "strongly discourage others from violating the canons." (R-35). This member points out this is the first time the JQC has imposed a fine of any amount and that no other state has imposed a fine of this magnitude and continues to say "this member believes no penalty should be imposed simply to set an example for future

judicial candidates. To do so makes the JQC actions appear arbitrary and capricious and does not serve to 'maintain confidence in our legal system.' This goal is set out in the Preamble to the Florida Code of Judicial Conduct.” (R-36)

This court should also consider the chilling effect a fine of this magnitude may have not only on candidates for judicial office but on the willingness of members of the bar to seek election to judicial office. Regardless of whether they are placed in office by appointment or election, no trial judge has a right to remain in office beyond his term unless the voters choose to return him to office. Every trial judge should expect to be challenged when his or her term expires. Even if an incumbent is doing a wonderful job, there is nothing improper about running against him or her simply because a challenger desires to serve as a judge and feels it is his or her turn. It is important nothing discourage lawyers who meet the constitutional requirements from seeking office.

### Conclusion

While limited restraint of a judicial candidate's first amendment right is permissible and justified, elections should focus on how candidates will perform the duties of office. As things currently exist, there is a perception that any challenge to an incumbent or discussion of issues during a campaign will result in JQC action against the candidate. If potential candidates fear they cannot raise issues without becoming subject to discipline, they will either not seek election or what few contested elections do occur will be personality contests devoid of meaningful information voters can use to make a reasoned decision between candidates.

The hearing panel found Judge Kinsey's conduct did not rise to the level in Alley and also found there was no evidence she is presently unfit to hold office. It made note of the “very

favorable” character evidence that was presented. While Judge Kinsey does not feel her campaign brochures and remarks on the radio program violated Canon 7, she understands why the hearing panel was troubled by the emphasis on her support from law enforcement and perhaps by the lack of affirmative statements about protecting criminal defendants’ rights. However, an election campaign is hectic with limited opportunities to present information to voters. In this campaign there was no issue of whether defendants’ rights were being protected, so she saw no need to include it in her brochures. She is most troubled by the finding she made knowing misrepresentations in the Heller and Johnson cases as she is the one person who knows her state of mind, and she did not intentionally misrepresent anything concerning these cases. Even if she had faced an opponent where misrepresentation might have helped her campaign, it should be clear from the character evidence presented that she would be incapable of it.

This may be an appropriate time for this court to issue the “narrowing construction” called for by Judge Stafford in his Order Granting Plaintiffs’ Motion for Summary Judgment following the Eleventh Circuit Court of Appeal’s remand of American Civil Liberties Union v. The Florida Bar, 999 F.2d 1486 (11th Cir. 1993) and provide future candidates easily understood guidelines that will permit them to fully discuss issues relevant to the office they seek without fear of violating the Canons.

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I certify copies of the foregoing have been furnished to the following:

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